IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1212 of 1996

in

SPECIAL CIVIL APPLICATIONNo 3135 of 1995

with

LETTERS PATENT APPEAL NO.1305 OF 1996

in

SPECIAL CIVIL APPLICATION NO. 3135 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESH THAKORELAL TANKARIA

Versus

CENTRAL AEXCISE & CUSTOMS DEPARTMENT

Appearance:

MR MB GANDHI for Appellant

MR JAYANT PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE A.L.DAVE
Date of decision: 26/10/1999

ORAL JUDGEMENT (Per Panchal, J.)

#. Both these appeals, which are instituted under Clause 15 of the Letters Patent, are directed against judgment dated August 21, 1996, rendered by the learned Single Judge in Special Civil Application No.3135 of 1995. The appeals involve determination of common questions of facts and law. Therefore, we propose to dispose them of by this common judgment.

#. The appellants in Letters Patent Appeal No.1212 of 1996 are the original petitioners. They are the owners of the premises bearing Block No.5 situated in the building known as Stadium House, at Navrangpura, Ahmedabad. An area admeasuring 105.57 sq. metres was let out by the owners to Central Excise and Customs Department, Division-III, Ahmedabad and a lease deed was also executed mentioning necessary terms and conditions. The lease was for a period of five years. The Directorate of Estates, Government of India, had issued an office memorandum dated September 1, 1982, stipulating that rent should be got reassessed from Central Public Works Department ('CPWD' for short) on the expiry of period of five years from the date of original assessment and after every five years thereafter. According to the petitioners, no steps were taken by the Central Excise and Customs Department either to revise rent or to get it reassessed from the Central Public Works Department, though the period of lease had expired. The case of the original petitioners was that a certificate dated December 17, 1994 was issued by the CPWD, which was made effective from September 9, 1993 whereby the rent was reassessed, but the same was not implemented by the original respondents. The original petitioners did not get favourable response though necessary demands were made by letter dated December 21, 1994. Under the circumstances, the original petitioners instituted Special Civil Application No.3135 of 1995 and prayed the Court to issue a writ of mandamus directing the original respondents to implement the assessment made by the CPWD as per its certificate dated December 17, 1994 and to make the payment of rent at the rate mentioned in the said certificate. The petitioners also prayed the Court to direct the respondents to clear accounts for the period prior to September 9, 1993 and to make the payment of difference of amount which had accrued to the petitioners owing to less payment of rent.

#. An affidavit in reply was filed on behalf of the

original respondents controverting the averments made in the petition. In the reply, it was, inter alia, averred that the Court had no jurisdiction to entertain the petition under Article 226 of the Constitution in view of the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. It was claimed in the reply that alternative remedy for increase of rent was available to the original petitioners under the provisions of the Bombay Rent Act and, therefore, the petition was liable to be dismissed. According to the department, no case was made out for increase in rent as claimed by the petitioners and, therefore, by filing the reply, they demanded dismissal of the petition.

#. The learned Single Judge, after hearing the parties, found that it was not in dispute that under certificate dated September 9, 1988, the Central Public Works Department had assessed rent of the subject premises between Rs.4845/- and Rs.5227/-. After noting the contents of the said certificate, the learned Single Judge took average of the aforesaid two figures and held that the owners of the premises were entitled to rent kat the rate of Rs.5036/- per month for the period mentioned in the certificate dated September 9, 1988. The learned Single Judge further took into consideration certificate dated December 7, 1993 issued by the CPWD and held that the owners of the premises were entitled to rent at the rate of Rs.8077/- per month for the period 1992-93. So far as period governed by certificate dated December 17, 1994 is concerned, the learned Judge held that the owners were entitled to average rent at the rate of Rs.9612/for a period of five years. In view of the above referred two conclusions, the learned Single Judge directed the respondents to fix the rent as indicated above for the different periods and observed that amount paid in excess or short should be adjusted. The above referred two directions contained in the judgment dated August 21, 1996 are challenged by the Central Excise and Customs Department as well as the Union of India in Letters Patent Appeal No.1305 of 1996, whereas the original petitioners have challenged that part of the judgment by which interest is denied to them on the arrears of rent which are directed to be paid to them.

#. We have heard learned counsel for the parties at length. The contention that the High Court had no jurisdiction to entertain the petition under Article 226 of the Constitution in view of the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, cannot be accepted. Article 226 not being one of those provisions of the Constitution which

may be changed by ordinary legislation, the powers under Article 226 cannot be taken away or curtailed by any legislation short of amendment of the Constitution. It is well settled the even where a statutory provision bars the jurisdiction of Courts, generally, it will not bar the jurisdiction of the High Court under Article 226. Having regard to the facts of the case, it cannot be said that there was inherent lack of jurisdiction in entertaining petition filed by the petitioner under Article 226 of the Constitution and, therefore, the plea that the impugned judgment should be set aside as the High Court had no jurisdiction to entertain the petition under Article 226 will have to be rejected and is hereby rejected.

#. The plea that in view of the alternative remedy available under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the petition should not have been entertained and the petitioner should have been relegated to the alternative remedy available to him under the said Act also cannot be accepted at this stage. It may be stated that another owner of the premises had filed Special Civil Application No.6435 of 1991 claiming similar such relief and therein notice was ordered to be issued to the respondents, i.e. the department, at the admission stage. The department had filed reply contesting the petition, inter alia, on the ground that alternative remedy was available under the Rent Act and, therefore, the petition should not be entertained. However, after hearing the learned counsel for the parties at length, the learned Single Judge had thought it fit to issue Rule and had entertained the petition. Thereafter, Special Civil Application No.3135 of 1995, out of which Letters Patent Appeal No.1305 of 1996 arises, was placed for admission hearing and as petition involving similar question was admitted earlier, this petition was also admitted and Rule was issued therein. It is well settled that once the petition is admitted, it should not be rejected on the ground that alternative remedy is available to the petitioner (see Hirday Narain v. Income Tax Officer, Bareilly, AIR 1971 SC 33, paragraph 12). The petition filed by the original petitioner was not only entertained by the learned Single Judge, but was heard on merits of the case. Moreover, with reference to Special Civil Application No.2398 of 1993, the Enforcement Directorate had addressed a letter dated March 19, 1996 to the Additional Central Government Standing Counsel and requested him to bring to the notice of the Court instructions contained in the said letter. By the said letter, the department had shown its readiness land willingness to pay rent based on

recognized principle of valuation as per the Government's usual practice in this regard, i.e. Rs.6600/- per month with effect from June 13, 1987 and Rs.12,440/- per month with effect from June 13, 1992 and had left the matter specifically to the decision of the High Court. When the department had agreed to pay revised rent on the basis of recognized principle of valuation from June 13, 1987 and subsequently from June 13, 1992, it would have been unreasonable to relegate the original petitioner to alternative remedy available to him under the Rent Act for the purpose of revision of rent from September 1, 1982 to August 31, 1987. Having regard to all these circumstances, we are of the opinion that no error was committed by the learned Single Judge in entertaining the petition on merits, though plea of alternative remedy available under the Rent Act was raised.

#. The contention that the learned Single Judge should not have adopted average of the two figures mentioned in different certificates and should not have determined rent payable to the original owners on that basis cannot be accepted. So far as certificate dated September 9, 1988 is concerned, the learned Single Judge has observed in the impugned judgment that determination of the rent on the basis of average of the two figures mentioned in the said certificate was not objected to by the department. This statement made in the judgment by the learned Single Judge is not disputed either by the Central Excise and Customs Department or by the Union of India. So far as determination of rent for subsequent period is concerned, it may be mentioned that the Enforcement Directorate had addressed a letter March 19, 1996, to the Additional Central Government Standing Counsel in Special Civil Application No.2398 of 1993 and instructed him to bring to the notice of the Court the decision of the department. In the said letter, it was specifically mentioned that the department was agreeable to pay the rent based on recognized principle of valuation as per Government's usual practice in this regard, i.e. Rs.6600/- per month with effect from June 13, 1987 and Rs.12,440/- per month with effect from June 13, 1992. However, the department had left the determination specifically to the Court. Thus, on the basis of concession which was made by the department, the learned Single Judge had proceeded to determine rent for different periods. The method of taking average of the two figures mentioned in different certificates and thereafter determining rent payable to the owners cannot be said to be unreasonable or arbitrary in any manner so as to warrant interference of the Court in the present appeal. Therefore, the impugned judgment is not liable

to be set aside on the ground that any error was committed by the learned Judge in taking average of two figures mentioned in the different certificates while determining the amount of rent.

#. Thus, we do no find any substance in any of the contentions urged on behalf of the appellants in Letters Patent Appeal No.1305 of 1996 and the same is liable to be dismissed.

#. So far as appeal filed by the owner of the property claiming interest on arrears of rent is concerned, we find that the learned Single Judge has exercised discretion of not granting interest to the owner of the property for arrears of rent. The exercise of the discretion cannot be said to be unreasonable or arbitrary so as to warrant interference by this Court in the appeal. In fact, the department could not pay the revised amount of rent because of non-availability of certificate from CPWD for which the department cannot be penalized. Having regard to the fair stand which was taken by the department, as is reflected in its letter dated March 19, 1996, we are of the opinion that the learned Single Judge was justified in not entertaining the prayer made by the owner of the property to direct the respondents to pay arrears of rent with interest. On overall view of the matter, we do not think that any error is committed by the learned Single Judge in not awarding interest to the owner of the property so far as arrears of rent are concerned. Under the circumstances, Letters Patent Appeal No.1204 of 1996 filed by the owner of the property claiming interest is also liable to be dismissed.

#. For the foregoing reasons, both the appeals fail and are dismissed with no orders as to costs.

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